

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

MTI0113/US

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On July 11, 2008

Signature

Typed or printed

Name Mary C. Deutsch**Application Number:** **10/804,391****Filed:** **March 18, 2004****First Named Inventor:** **Gary W. Guent****Art Unit:** **3735****Examiner:** **John O. Lacyk**

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.☐ assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☐ attorney or agent of record.

Registration number _____

☒ attorney or agent acting under 37 CFR 1.34.Registration number if acting under 37 CFR 1.34 46,346
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Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.



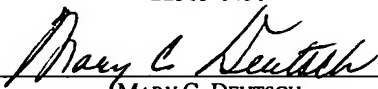
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Guerst et al.	Examiner: John O. Lacyk
Serial No.: 10/804,391	Group Art Unit: 3735
Filed: March 18, 2004	
For: BLOOD VESSEL HOLDING AND POSITIONING SYSTEM	Docket No. MTI0113/US

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MARY C. DEUTSCH

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Each of independent claims 1, 10 and 24 have been rejected under 35 U.S.C. 103(a), with independent claims 1 and 10 being rejected over Kimberley et al. (US 3,361,133) in view of Collito (US 3,254,650) or Toch (US 3,916,875) and independent claims 1, 10 and 24 being rejected over Peternel (US 3,561,448) in view of Collito or Toch. It is submitted that claims 1 and 10 are patentably distinct from Kimberley et al. in view of Collito or Toch, and that claims 1, 10 and 24 are patentably distinct from Peternel in view of Collito or Toch.

First, it is submitted that clear error exists in the obviousness rejection of claims 1 and 10 based on Kimberley et al. in view of Collito or Toch. The error is based on the Examiner's failure to show proper motivation for modification of Kimberley et al. to include a ring such as that disclosed in Collito or Toch.

Kimberley et al. discloses a device for holding the end of a severed vessel in position for a mechanical connection to be made quickly to an external blood circuit (col. 1, lines 44-48). The device is a vacuum artery clamp including a cylindrical housing that is split into two identical halves 1, 2 (col. 2, lines 6-7). A handle 5 is fixed to each

housing half 1, 2 by swingable arms 6, 7 that hold the halves 1, 2 in relative positions (col. 2, lines 11-13, 21-23). The handle 5 and swingable arms 6, 7 combination includes a spring bias that urges the housing halves 1, 2 to a closed position while still allowing the halves 1, 2 to easily assume an open position for loading of a vessel into the device (col. 2, lines 13-21).

Collito discloses an anastomosis device comprising a mating pair of connector devices 14, 16 that are associated with separate parts of a body member, e.g., a vessel, and in turn are connected to bring the separate parts of the body member together (col. 2, lines 1-4; col. 3, lines 48-49). Each connector device 14, 16 has a pair of component parts (18, 20 or 22, 24), which fit together to form sleeves 26, 28 (col. 3, lines 49-52), which include radial flanges 30, 32 that are placed on either side of a defective portion of a vessel being repaired (col. 3, lines 53-54, 61-62). The connector devices 14, 16 are assembled *in situ* with the components being affixed to each other and to the vessel using an adhesive known as Eastman 910 (col. 3, lines 18-20, 58-62, 64-68). A defective portion of the vessel between connector devices 14, 16 may be excised, then the flanges 30, 32 on the connector devices 15, 16 may be brought together (col. 4, lines 25-29). Eastman 910 may then be used to affix the flanges together (col. 3, lines 64-68). In one described embodiment, as shown in FIG. 5, a retainer ring 48 is placed over flanges 30, 32 in order to attach the flanges 30, 32 together, which would eliminate the need for applying Eastman 910 to the flanges 30, 32 (col. 4, lines 40-44).

In the Final Office Action, the Examiner provided that Collito teaches holding two halves of a cylindrical body together using a ring. However, that was a clear error, in that such a feature is missing from Collito. The retainer ring 48 in Collito is provided to hold the flanges 30, 32 from the separate connector devices 14, 16 together end-to-end as an alternative to using adhesive. The retainer ring 48 of Collito does not hold two halves of a cylindrical body together.

In addition, the Examiner also failed to show proper motivation for modification of Kimberley et al. to include a ring such as that disclosed in Collito. First, in Kimberley et al. there is no similar configuration to that in Collito, which is of two cylinders being joined end-to-end. Kimberly et al. instead discloses two semicylindrical housing halves 1, 2 that are urged together to form a cylinder shape. Second, the housing halves 1, 2 of

Kimberly et al. are spring biased to urge the halves 1, 2 to a closed position, with the halves 1, 2 being easily opened for loading of the device. The halves 1, 2 are not connected together. On the other hand, in Collito, the purpose of the ring 48 is to connect the flanges 30, 32 together. One of ordinary skill in the art would not, therefore, seek to add a ring as in Collito to the device described in Kimberley et al., as there would be no need for such a ring. When an open position is desired for loading a vessel into the Kimberly et al. device, a ring holding the halves 1, 2 together would be a hindrance. An object of the Kimberley et al. device is to allow for anastomosis to be “quickly and readily accomplished,” and having a ring encircling and attaching the halves 1, 2 would be contrary to such an object and would destroy the functionality of the device. The Examiner, therefore, has failed to show proper motivation for modification of Kimberley et al. to include a ring such as that disclosed in Collito. Thus, the Kimberley et al. and Collito references cannot alone or in combination form the basis of an assertion that claims 1 and 10 (and all claims dependent thereon) are obvious.

Toch discloses a device for facilitating lymph duct cannulation (col. 1, lines 6-7). Such a device is a cannulation facilitator 15 that comprises two identical semicylindrical members 15a, 15b that are assembled together to form a cylinder having a pair of coaxial openings 19 on the ends 16a, 16b (col. 2, line 62 – col. 3, line 5). A lymph duct, as shown in FIG. 3, may extend through the openings 19, with a clamp 20 holding the semicylindrical members 15a, 15b in place around the duct (col. 3, lines 2-6).

In Toch, the clamp 20 is used to hold two semicylindrical components together, which had no other means for being held together. In Kimberley et al., on the other hand, the handle 5 is spring biased to urge the halves 1, 2 together in a closed position, with the handle 5 and arms 5, 6 being capable of being easily manipulated to move halves 1, 2, to an open position. One of ordinary skill in the art would not, therefore, seek to add a clamp component as in Toch to the device described in Kimberley et al., as there would be no need for such a clamp. Such a clamp encircling and attaching the halves 1, 2 would be contrary to the object of the Kimberley et al. device and would destroy the functionality of the device. The Examiner, therefore, has failed to show proper motivation for modification of Kimberley et al. to include a clamp such as that disclosed in Toch. Thus,

the Kimberley et al. and Toch references cannot alone or in combination form the basis of an assertion that claims 1 and 10 (and all claims dependent thereon) are obvious.

Second, it is submitted that clear error also exists in the obviousness rejection of claims 1, 10 and 24 based on Peternel in view of Collito or Toch. The error is based on the Examiner's failure to show proper motivation for modification of Peternel to include a ring such as that disclosed in Collito or Toch.

Peternel discloses a clamp assembly for positioning and holding blood vessels to be interconnected (col. 1, lines 1-3). Ends portions of blood vessels are connected while they are held in a cylindrical shape by two cylindrically shaped positioning assemblies 16, 18 having cylindrical sleeves 36, 38 and vacuum manifolds 52 that provide suction to draw the vessels against interior walls 42 of the sleeves 36, 38, and flare the ends 20, 21 of the vessels (col. 1, lines 68-70; col. 2, lines 7-34). FIG. 3 shows that the sleeves include first and second semicylindrical sections 70, 74 which are pivotally interconnected at one end by a hinge assembly 78 to allow for an open position and a closed position (col. 2, lines 49-59). The open position enables the sections 70, 74 to be positioned on opposite sides of a blood vessel (col. 2, lines 61-62). After being so positioned, sections 70, 74 are moved to the closed position by operating an actuator handle or lever 94 which is pivotally connected to arm 80 (in FIG. 1) (col. 2, lines 62-67). In the closed position, the sections 70, 74 are brought into sealing engagement (col. 2, lines 67-70).

In Collito, again, the ring 48 was used to connect the flanges 30, 32, or two ends of two cylinders together. Although Peternel does include two positioning assemblies 16, 18 that are located end-to-end, the disclosure provides an assembly for holding them in close proximity to allow for suturing of the ends of vessels held therein. The assembly involves, generally, arms 80, 108 that are pivotally interconnected at 114. In addressing the ring feature of Collito and its relevance to Peternel, the Examiner provided that Collito teaches holding two halves of a cylindrical body together using a ring. As discussed above, that was a clear error, in that such a feature is missing from Collito. The retainer ring 48 in Collito was provided to hold the flanges 30, 32 together end-to-end and did not hold two halves of a cylindrical body together. Peternel already includes an assembly to perform that function. Therefore, the Examiner failed to show proper

motivation for modification of Peternel to include a ring such as that disclosed in Collito. Furthermore, the Peternel and Collito references cannot alone or in combination form the basis of an assertion that claims 1, 10 and 24 (and all claims dependent thereon) are obvious.


In Toch, again, the clamp 20 was used to hold two semicylindrical components together, which had no other means for being held together. In Peternel, on the other hand, the assembly includes an actuator handle or lever 94 which is pivotally connected to arm 80 (in FIG. 1) (col. 2, lines 62-67) that brings sections 70, 74 into sealing engagement (col. 2, lines 67-70). One of ordinary skill in the art would not, therefore, seek to add a ring or clamp component to the device described in Peternel, as there would be no need for such a ring. The actuator handle 94 holds the sections 70, 74 in a closed position. When an open position is desired for loading a vessel in the device, such a ring or clamp would be a hindrance, and would destroy the functionality of the assembly. The Examiner has, therefore, failed to show proper motivation for modification of Peternel to include a clamp such as that disclosed in Toch. Furthermore, the Peternel and Toch references cannot alone or in combination form the basis of an assertion that claims 1, 10 and 24 (and all claims dependent thereon) are obvious.

CONCLUSION

It is respectfully submitted that clear errors were made in the rejections of record, and specifically proper motivation for modifications of references in the obviousness rejections were lacking. A favorable decision by the Conference Panel is appropriate in this case and is hereby requested. In the event that a phone conference between any member of the Conference Panel and the Applicants' undersigned attorney would help resolve any remaining issues in the application, the Examiner is invited to contact the attorney at (651) 275-9846.

Dated: July 11, 2008

Respectfully submitted,

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